Supreme Court, U.S.
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No._____

In The

Supreme Court of the United States

1996 Term

CHERIEL JENSEN,

Appellant & Petitioner,

vs.

ROBERT S. GOULD,
DOES 1 THROUGH 10

Appellees & Respondents

No. HO14446

PETITION FOR WRIT OF CERTIORARI TO THE
CALIFORNIA SIXTH DISTRICT COURT OF APPEALS

TO PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW.

A. Concerning attempted initiation of mental commitment is there a federal Constitutional right to: (1) Fourteenth amendment substantive and procedural due process, (2) Privacy, (3) Liberty of ones person and thoughts under the Preamble, (4) The state of ones mind and thoughts free from compelled inquiry, or alteration under the First and Fourth amendment, (5) Thirteenth amendment freedom, (6) and Freedom from cruel and unusual punishment under the Eighth amendment when seeking medical care?

B. Can taking of these rights under authority of state law be redressed under 42 USC § 1983? Can one seek redress from a private party, acting with special authority conferred by state law, who has spread defamation without foundation, demanded commitment, and caused unwarrented arrest, loss of privacy, pain, physical injury, property loss, interference with relationships, and emotional distress?

C. Was Defendant, who assumed the special authority of Calif. Welf. & Inst. Code § 5000 et seq., acting under color of that statutory scheme? Can the state court immunize Defendant for constitutional deprivations based on privilege?

D. Is notice required to initiate "proceedings?" Does Calif. Civ. C. § 47, sub. (b), immunize malicious communications to police as if in proceedings? Does the state court immunize libel, slander, invasion of privacy, negligence causing physical injury, property loss, or emotional distress?

E. Will the court nulify Calif. Welf. & Inst. Code §§ 5150, 5201, & 5202 which provide an open invitation to deprive people of constitutional and personal rights, engage in insurance fraud, and injure, as in this case?

F. To meet the requirements for summary judgment must petitioner have set forth damages in detail?

G. When a Superior Court judge rules in plaintiff's favor on the substance of assertions of a demurrer, can the defendant judge shop, bring the same issues before a second Superior Court judge, and obtain an opposite ruling based on the same assertions.

II. STATEMENT OF THE OFFICIAL AND UNOFFICIAL REPORTS OF OPINIONS DELIVERED IN THE CASE BY OTHER COURTS OR ADMINISTRATIVE AGENCIES

Opinions and the official administrative determination are voluminous. For this reason they are separately bound as Appendicies accompanied by a comprehensive index with file dates, courts and decisionmakers.

Also included in the Appendicies are pertinent texts of federal and state Constitutional provisions and Code Sections.

III. GROUNDS ON WHICH JURISDICTION OF THE SUPREME COURT RESTS

The statutes which apply to this case are the ones that started it out in federal court: 42 USC 1983 and 28 USC 1343.

The timing which brings this case to the doorstep of this court is refusal to review a timely Petition for Review by the California Supreme Court on November 13, 1996.

This case began in federal court as a case presenting constitutional issues, and a request to nulify certain constitutionally defective California involuntary commitment statutes. It is timely presented here after federal district court review, federal appeal, refiling in state court in modified form per the federal courts' decisions, and now, after all state appeals have been exhausted without redress.

It presents important questions of constitutional protection and state laws which set up contitutionally defective processes by which people are arrested without foundation or probable cause, interrogated without foundation or probable cause, officially defamed as an integral part of the way the statute is invoked and before facts are assertained, and threatened with involuntarily commitment without foundation or probable cause established. From the beginning in federal court and throughout the state court processes, Petitioner seeks nulification of these unconstitutional California involuntary commitment statutes, Welf. & Inst. Code § 5150, 5201, & 5202 which have already been determined to fail a constitutional test in the controlling case in the Ninth Circuit, *Doe v. Gallinot*, 657 F.2d 1017, 1021 (9th Cir. 1981), but

which nevertheless are still in use. By use of their authority, Defendant has caused Petitioner severe permanent injury and other damages.

IV. CONCISE STATEMENT OF THE CASE

A. TIME AT WHICH FEDERAL QUESTIONS SOUGHT TO BE REVIEWED WERE FIRST PRESENTED

1. Federal Court

This case was originally filed in federal district court in San Jose. It was a 42 USC § 1983 (28 USC § 1343), action for damages for actual loss of federal and state constitutional rights including freedom, and freedom seek medical care (Thirteenth Amendment, Fourteenth Amendment, and California Constitution, Art. 1, § 1.) (Excerpt of Record, CR 5:14-15, 17, 21-24), substantive and procedual due process (CR 5:1-2, 16-17) (Fifth, Fourteenth, & First Amendment (Ex. of Rec., CR 5:18-19, 21-23), the right to be secure in one's person from illegal search and seizure (Fourth Amendment), freedom from governmentally facilitated and authorized intrusion (Fourth and Ninth Amendments) (CR 5:21, 24-25, 27) privacy rights conferred through the federal constitution (First, Fourth, Fifth, Ninth and Fourteenth Amendments, 42 USC § 1983) (CR 5:17-20, 23, 27) and privacy through the California Constitution, Article 1, § 1 (CR 5:17-18, 27).

In light of these constitutional deficiencies Petitioner challenged California Welfare and Institution's Code § 5150, 5201, & 5202 which authorize and invite violation of fundamental rights. (Ex. of Record, CR 5:18-19, 27).

The federal District court dismissed (failure to state a federal cause of action), with leave to file in state court.

On appeal to the Ninth Circuit each of the same issues were raised. The Ninth Circuit upheld the federal dismissal of all the constitutional causes of action.

2. State Court

After 21 nearly identical demurrers and other motions, and a series of decisions, the complaint was dismissed in Superior Court for failure to state a claim. The California Sixth District Court of Appeal ruled defendant immunized based on

California Civil Code § 47 sub. (b), insulating statements made "in proceedings." Thus the state consideres his "unfounded" (quoting San Jose police report, Appendix 15, p. 55) demands and false statements to the police were privileged. Defendant was thus immunized, not only from his false assertion of authority, unfounded demands and false statements to police officers, but immunized as well from the damages flowing from his false assertion of authority and false, unfounded defamation to Petitioner's employer, Petitioners' husband, and Petitioners doctors, and from his negligent and malicious injury to Petitioner. There were no proceedings, only Defendant-demanded unwarranted arrest; arrest and compelled interrogation without probable cause, attorney present on questioning, advice of rights or other due process safeguard; and threatened commitment without probable cause.

Though Petitioners case was supported in every fact by the police report, witness and expert witness statements and the record, and defendant had no defense, Summary judgment was denied Petitioner on the grounds she had failed to establish the amount of damages. (Appendix 7 p. 33) (Damages cannot be stated in a personal injury complaint in California. (Appendix 17, p. 60, Code Civ. Proc. § 425.10)

The California Supreme Court refused to review the Appeals Court decision On November 13, 1996.

B. FACTS MATERIAL TO CONSIDERATION OF THE QUESTIONS PRESENTED

Defendant in this appeal is Robert S. Gould, M.D. who advertised as a neurologist with an office in Los Gatos, California. Does One through Ten have not been discovered due to restriction on discovery at the outset and continuing throughout the federal and state court proceedings.

Petitioner is Cheriel Jensen, a professional with a Bachelor's and a Masters degree in architecture, who had an established career as a Planner (17 years) and who had spent five years at the same time also teaching graduate school, a position she had recently resigned due to her injuries (thought then to be illness). At the time of Gould's initial fraud, libel, slander and other acts, she was acutely injured from unnoticed and then unknown toxic workplace exposure. Due to the exposures

and Gould's acts in causing her doctors to quit her care, and thus prevent discovery in time, she is now disabled. (App. 1921, 1922 shows the exposure cause.)

On October 7, 1991, MRI scans showed an anomaly (area of absent signal) in her cervical spine. (App. 1821, 1822) Muscle spasms accompanied compression of her cervical spine. A cervical collar was prescribed to keep her spine straight and her head up. She had lost feeling in her hands and feet in a stocking-glove distribution (App. 1795-1798). These conditions related, she was told, to the loss of autonomic breathing she had experienced August 26, 1991 (App. 1784) that landed her in the emergency room at Valley Medical Center. She had been given powerful narcotics there to prevent further arrested breathing (App. 1784) and was told she may always need them. She was under the care of a neurosurgeon and a general pratictioner, with consultation as needed from her brother, a psychiatrist, who had determined she needed the care of a neurosurgeon.

In her doctors' efforts to assess the extent of damage to the nerves of her hands and feet, and determine if it originated in the cervical spine, or was in addition to that damage, petitioner was sent to a neurologist. Defendant Gould happened to be on her insurer's contract list. Her visit to Gould October 7, 1991 was a one-time visit solely for nerve signal measurements. (App. 1925)

Gould had her picture taken by an assistant. He kept her waiting in a paper gown for over half an hour. When he did appear he began by questioning her housekeeping style. Gould declined to review her scans and records she had brought or perform testing she sought, and amid interuptions, loudly accused her of "depression" and then "suicidal ideation." When she questioned his competence to discuss these issues, he claimed he was a psychiatrist, (claims which were not true, App. 1814). When Gould next absented the examining room, Petitioner dressed and left, after less than 10 minutes contact, due to these irregularities in his behavior and his failure to perform the testing for which she had come. She thus firmly rejected him as a care provider. Defendant was standing with his assistants just outside the examining room door. He attempted to physically blockade her exit with his

bulk. To exit his office Petitioner was forced to squeeze past him.

Petitioner returned to work. She notified her insurers immediately that day by phone, confirmed by letter, that if they received a bill from Gould they were not to pay it as she had received no care and had rejected Gould as a care provider.

Actively trying to effect her commitment before she left his office, but unknown to her at the time, Gould had called and made false assertions to the Los Gatos police. When they arrived at his office she was gone. Gould fabricated a story that Petitioner had made a scene and suicide threats (App. 1818) as she left his office. Gould demanded police find her, and transport her for commitment. Gould's directive for Petitioner's apprehension was issued (a BOL) over county emergency radio, a radio band widely monitored (App. 1818).

Brandishing handcuffs, and in possession of the Polaroid photograph taken in Gould's office, San Jose police officers arrested Petitioner in her workplace on Gould's orders as she was leaving for scheduled medical treatment prescribed by her neurosurgeon. The San Jose police record reports their instructions: "DR WANTS 72 HR HOLD IF SHE DOES NOT FIT TXT: CRITERIA FOR 72 HR HOLD,, 10-21 DR FROM SCENE,,HE WILL DO THE PAPERWO RK" (App. 1729) (emphasis added).

The arrest took place and the interrogation began in the large, crowded public part of her office and continued in an open sided conference room with her professional collegues and the public looking on–a devastating public spectacle.

Petitioner was not allowed to proceed to her medical treatment prescribed by her neurosurgeon (App. 1730-1741), scheduled for that very time.

The police determined Gould's charges were "UNFOUNDED" (App. 1729) and they did not accede to his additional demands (Police report, (Appendix 15, p. 54-55) App. 1729 (also at 1249, 990, 343)). By phone the policeman then obtained Gould's verbal agreement to withdraw his demands by giving him no choice. (Police Report, App. 1729)

It was too late. The defamation and violation of Petitioner's physical privacy was uncorrectable. The loss of medical care was material. Though Petitioner was released to attend the last portion of her treatment, the time required for pain control had been used up by the arrest and Petitioner experienced excruciating long lasting pain and trauma (App. 1278). The physical and emotional trauma caused by the events set in motion by Gould caused Petitioner, over the next 15 days to loose 12% of her body weight (App. 1941)

A medical patient with a collapsed, damaged cervical spine (App. 1822, 1821), Petitioner had been prescribed powerful narcotics to enable her to continue to breath and a cervical collar to hold up her head. In a mental hospital she would not have had access to the life-giving drugs prescribed for her, or any other care she required. Gould's acts were life threatening to her and seriously reckless. (See declaration of Dr. Louis A. Moench, App. 1730-1741.)

Gould's commitment plan was thwarted because, contrary to Gould's orders, the police actually did investigate. Gould had told them lies concerning all aspects of his role and petitioner's condition. Gould had claimed to be petitioners long term doctor, a psychiatrist, and claimed her condition was psychosomatic. All were shown to be false. The police officers refused to accede to Gould's further demands, and took steps to make sure other police departments in the area were notified to also refuse Gould's demands. Appendix 15.

Had Gould's allegations been truthful he could have provided declarations of his office personnel who were present when Petitioner left, but he has provided no such declaration.

The San Jose police report shows that Gould told the officers "HE WILL DO THE PAPERWO RK," (Appendix 15) meaning that they had not been asked to investigate or to exercise independent judgment as he has claimed.

Gould sought out Petitioner's husband in Ohio and falsely claimed that Gould had been Petitioner's long term doctor. He told her husband that Petitioner's complaints were psychosomatic, and made other unfounded, defamatory assertions (App. 1760). Upon Gould's communication, Petitioner's husband of 31 years abruptly stopped communication with her, this silence lasting a year, tearing the

fabric of her marriage by placing a wall of hostility into it and from that time destroying the confidence within it. Gould's defamation has now traveled throughout her nuclear and extended family as if fact (App. 1742-1754). Gould thus materially interfered with and destroyed the trust and confidence within these most important of relationships.

Gould contacted Petitioner's employer, supervisor Robert S. Sturdivant and made false assertions of authority and knowledge, injuring her reputation as a professional person built over more than 17 years (App. 1021, 1941).

Gould made false assertions alleging Petitioner had made suicide threats and a scene on leaving his office by mailed letter to Petitioner's long term family doctor, Dr. Odell (App. 1812) who thereupon abruptly quit her care, (App. 1801). The letter to Dr. Odell from Gould came into the hands of her treating neurosurgeon, Dr. Greenwald who swiftly canceled her medical treatment and handed her off (See App. 1300).

Gould's libel followed Petitioner as she tried to reestablish medical care, proximately causing loss of coordinated medical care and then all medical care at these critical times of acute illness (injury). She was less and less able to recover between episodes. Without medical care to help her, or discover the cause, within the next nine months Petitioner became disabled from continuing, repeated, but then unknown toxic workplace exposure. (App. 1785-1790, 1730-1741, 1742-1754). The most severe exposures occurred in the nine months after the Gould visit as they were potentiated by improper mixing. In June, 1992 several acute exposures caused Petitioner to become unable to process toxic chemicals. She became permanetly disabled. Petitioner now experiences frequent, life threatening anaphylaxis, asthma, severe allergies, excessively low immunoglobulins, internal bleeding and other conditions, her liver and kidneys now unable to process everyday exposures.

His opinion now framed by Gould's assertion to him, Petitioner's employer refused to accommodate her disability, and she was defacto terminated from her well paid job and profession, and had to retire on a small disability pension.

Gould's defamation reached every part of Petitioner's life at a time she was undergoing serious medical conditions, was

desperately in need of the support of her family, and in need of investigation and recognition so she could learn of and escape toxic exposures to which she was then unknowingly subjected (App. 1742). In all areas Petitioner lost support and care she should have received and has experienced severe injury and ostracism due directly to Gould's defamation, these damages now largely irreversible (App. 1742-1754).

Almost a year after the single contact, Gould carefully pruned his false papers, removing the letter Petitioner's attorney sent him demanding retraction (App. 803-805), which would have shown his papers in contention. Without asserting Petitioner's privilege as required by the California Evidence Code §§ 991-996 (Appendix 17, p. 63-64), or determining relevance as required by the Evidence Code § 996, Gould's records were subpoenaed without notice to Petitioner and he gave copies of his false and defamatory papers to Petitioner's employer in her Worker's Compensation case for injuries sustained during a toxic exposure June 12, 1992 (App. 1207, 1208, 1209), an exposure nine months after the visit to Gould. Had his is papers been truthful, they could not have been relevant to the only issue in that action–the single toxic exposure nine months after Petitioner met meeting Gould. Furthermore, Gould had been rejected as a care provider at the outset, had performed no test, had reviewed no records, and had declined to examine Petitioner. His were not medical reecords, only papers constructed for fraudulent purposes.

Gould papers, and reports subsequently tainted by them (App. 1820) were the only defense submitted in Petitioner's Workers Compensation claim for the toxic injury of June 12, 1991. Six doctors, including the emergency room doctor and both Qualified Medical Examiners, found toxic injury. Both QME's recommended compensation. On her motion Gould's defamatory papers were excluded by the Worker's Compensation judge after his review of them (in the Worker's Compensation forum the judge is both judge and jury and thus submissions, though they may be rejected, have still been seen), but the Qualified Medical Examiner's had been sent Gould's false papers by her employer. In his report one QME quoted directly from Gould's false and defamatory letter to Odell. (App. 1820, 1812) Thus Gould's libel was before the Worker's Compensation forum verbatim in an authoritative form though his records had been excluded. The damage had

been done upon their production before Petitioner had even been aware of Gould's papers or their submission.

Petitioner now has a claim for cumulative toxic injury before the Workers Compensation Board and in the federal court where the Ninth Circuit Court of Appeals reinstated her toxic injury suit. With defamatory Gould papers in front of them as a result of Gould's improper distribution, Petitioner initially lost her federal toxic injury case when Gould papers were introduced. Though her toxic injury case was reinstated by the ninth circuit, District Judge Ware has not permitted further activity on the toxic injury case for 10 months. Petitioner is not likely to prevail in any forum where Gould's defamation is used to defeat her credibility.

As the disposition of this case shows, Gould's defamation is devastating. Defendant's acts in support of his fraud proximately caused additional exposure, severe, immediate and long term injury and disability therefrom, invasion of Petitioner's physical, marriage, family, medical, and professional privacy, collapse of critically important relationships, and cost Petitioner her professional career, and social and private reputation.

V. THE NATURE OF THE CASE

A. ELEMENTS OF THE FEDERAL COMPLAINT

The federal complaint was an action for damages for actual loss of constitutional rights including freedom, and the right to be free from the threat of loss of freedom when an individual seeks medical care (Thirteenth and Fourteenth Amendments), under 42 USC § 1983 (Ex. of Rec., CR 5, pp. 14-15, 21-24), an action for damages for actual loss of medical care, pain and suffering, and resulting disability from actual violation of First Amendment freedom from false claims of special knowledge of the thoughts of another (Ex. of Rec., CR 5, pp. 18-19, 21-23) and false claims of the content of speech of another where thoughts as alleged by another (as here) or misreported speech can result in a threat of or actual lock up (CR 5, p.18); an action for damages for the actual violation of the right to be secure in one's person from illegal search and seizure (Fourth Amendment), and freedom from governmentally facilitated and authorized intrusion without established or any probable cause (Fourth and Ninth Amendments) (CR 5, pp.24-25, 27); an

action for damages for violation of Petitioner's due process rights, causing arrest and detention without probable cause, without warrant, petition or application (Fourth and Fourteenth Amendments) (CR 5, pp. 15-16, 21, 27); an action for damages for actual violation of Petitioners privacy rights conferred through the United States Constitution (First, Fourth, Fifth, Ninth, and Fourteenth Amendments, 42 USC § 1983) (CR 5, pp, 17-20 23, 27) and the California Constitution, Art. 1, § 1., (CR 5:17, 27), and an action for damages for the cruel and unusual punishment inflicted upon Petitioner as a medical patient seeking care by a person with a state conferred role, in violation of the Eighth Amendment. (CR 5. pp. 17-18, 27)

Petitioner challenged the California Welfare and Institutions Code § 5000 et seq. which allows violation of fundamental constitutional rights. (Ex. of Rec., CR 5, p.18-19, 27).

B. IN THE FEDERAL DISTRICT COURT

The federal Complaint was filed in federal Court for the Northern District of California, San Jose, October 7, 1992. A First Amended Complaint was filed November 13, 1992. The Amended Complaint and Summons were served by mail, including a return receipt request, on Defendant on November 16, 1992. Civ. Doc., p. 2).

Return Receipt for Summons and First Amended Complaint was personally signed by Defendant November 18, 1992 and returned. (Ex. of Rec., CR 19 II h), Decl., Index and Exhibits A, B, and C.) Acknowledgment forms included in the mailed service are stamped filed on December 9, 1992. (CR 7)

Defendant did not answer but instead filed motions on December 30, 1992, asking the court to dismiss for lack of subject matter and diversity jurisdiction and for failure to state a claim upon which relief can be granted, or in the alternative for a more definitive statement. (CR 8. 9. and 10.)

Plaintiff filed a motion for declaratory judgment January 13, 1993, based on Defendant's late response (Local Rules).

C. DISPOSITION IN THE FEDERAL DISTRICT COURT

With no hearing, Judge James Ware issued his order and judgment March 10, 1993 (Appendix 49) rejecting Plaintiff's

Motion for Default Judgment, excusing Defendant's late response, and granting Defendant's motion for failure to state a claim. Judge Ware's decision contains substance and point of view from Gould's declaration even though the Amended Complaint was the only pleading before him.

Judge Ware rejected Defendant's other motions determining that the complaint was not wholly unsubstantial or frivolous, and it was appropriate subject matter jurisdiction for Federal Court.

Judge Ware determined that Petitioner may have claims against Defendant under state law including a claim for defamation, but he declined to hear those claims. He provided 30 days for Petitioner to file a complaint in state court.

In final judgment he dismissed Petitioner's complaint without leave to amend. Petitioner filed a complaint in state court and appealed.

D. DISPOSITION IN THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

The Ninth Circuit Panel, Judges Schroeder, Canby, and Wiggins affirmed. (Appendix 13)

Because Petitioner's damages did not include a "72 hour hold" she was not allowed to assert a liberty interest.

They upheld Calif. Welf. & Inst. Code §§ 5000 et seq. as an emergency measure "provided a probable cause hearing is held shortly thereafter" in spite of their own controlling case *Doe v. Gallinot* (C.A. 1981) 657 F.2d 1017, which holds, "Mandatory review procedures are illusionary due to large segment of protected class not realistically expected to set proceeding into motion in the first place."

Gould's violation of privacy and defamation cannot be ascribed to the state because they said, his acts are outside the scope of the involuntary confinement statutes. They determined that Petitioner failed to show Defendant acted under the color of state law regarding her claims.

Peititioner's motions for rehearing and hearing en banc were denied April 14, 1994. (Appendix 14)

E. ELEMENTS OF THE STATE CASE

The State action was filed April 9, 1993 (App. 1), and before service, was amended, filed June 10, 1994 (App. 394).

In the state action, the causes of action in the complaint are: negligence causing personal injury and property damage, invasion of Constitutional privacy, libel and slander, negligent interference with employment, intentional infliction of emotional distress, intentional interference with civil action, and false application for petition.

This action requests damages and injunctive relief for a series of fraud based actions taken by respondent Robert S. Gould, M. D., against Petitioner to effect her lock up without having any beneficial purpose to her, a medical patient seeking and requiring medical care. (App. 1730-1741) Gould attempted to unlawfully enlist the cooperation of others to carry out his fraud and in doing these acts, he deliberately libeled and slandered petitioner. His defamatory allegations materially harmed Petitioner by causing withdrawal of her coordinated medical treatment resulting in failure to recognize the cause of her medical condition and disability from that failure, interference with her marriage, defamation within her workplace and loss of her job and profession, and then interference with her means for recovery. Gould's defamation was thorough and has affected every part of her life and even this case brought to stop it and recover from it.[1]

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[1] Petitioner has produced evidence to show Gould acted without foundation (Appellant's Appendix 1729–police report finding no foundation to Gould's charges), and that his defamatory assertions are entirely false. (Appellant's Appendix 1729-1741) Petitioner has produced evidence to show that the record he attempted to build to elicit unwarranted insurance payments is internally inconsistent. Petitioner has produced evidence to show that Gould's papers were initially drawn to assure he received maximum payments according to the National Medical Enterprises, Inc. corporate plan and instructions to "chart for depression" as the most lucrative diagnosis (Appellant's Appendix 1862-1907), and when that failed, to elicit extensive participation of others to secure his bounty by charging she made "suicide threats," and when that failed to produce records to receive unearned insurance payments for tests never conducted. Petitioner has produced evidence to show Gould's acts were planned and begun in advance of his ever having meet her. (App, 1809) Petitioner has produced evidence to show Gould was staff to a fraudulent corporate enterprise underway at the time (App. 1814, and 1862-1907). He has done the same thing to "about a dozen" (App. 742) others by his own admission. Though in practice a very short time, as shown in court

F. ACTION IN THE SUPERIOR COURT

1. Defendant's Demurrers

Defendant immediately moved for stay which was granted until the federal issues were decided. At that time Defendant's Attorney promised Judge Wm Martin that he would let the case go forward after the federal issues were sorted out, a promise he did not keep. The stay was lifted (App. 391) 5/12/94, after the Federal Appellate court ruled, but not the stay on discovery. Despite his earlier promise, Defendant Gould demurred, and also moved to strike through three more amendments and he even demurred to the second Proposed Amended Complaint submitted with Petitioner's motion to be allowed to request punitive damages. (Demurrers at App. 434, 947, 1045, and 1644)

a. Demurrers were accompanied by declarations which repeated his defamation. He offerred no corroboration.

As in the federal case, Demurrers (App. 434, 947, 1045, and 1644) were improperly accompanied by requests for judicial notice of defendant's declaration repeating his defamatory allegations and alleged excuses for his acts. (Though his own employees were present in Gould's office when Petitioner left that office, no declarations were submitted to vouch for Gould's assertions of unusual behavior or a suicide threat–or any other proof required to defeat the liability in his letter to Dr. Odell or the slander of his false statements to police, Petitioner's husband, or her employer.

Though alleged excuses may be used in an Answer, his excuses were prejudicial and inappropriate to support a demurrer. (*Pulvermacher v. Los Angeles Coordinating Committee for Aid to Jewish Refugees* (1944) 143 P.2d 974, 61 CA.2d 704). The only suitable defense is actual proof of

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records he has an extensive history of injuring his patients. At least two of his patients died and one was blinded as a result of his failure or unwillingness to review test records. Though Petitioner was not his patient, having rejected him as a care provider before the first 10 minutes, the extensive actions he took in support of his fraud and events he set in motion physically, emotionally and materially damaged Petitioner and continue to damage Petitioner who is now disabled and retired on a small disability pension.

the assertions he made, together with a showing of where his authority may come from to make assertions, and where he got authorization to publicize those assertions. He has no such defense. Judge Herlihy properly rejected defendant's extraneous submissions (App. 941). Judge Stone did not (App. 2014-2016). Judge Levinger could not because Defendant had filed for summary judgment at the same time as his demurrer hearing (App. 1756-1758 & 1790-1792).

b. Grounds stated in sustaining demurrer's were not specific enough to provide guidance for amendment nor did they have apparent relationship to the next round of hearing.

> CCP "§ 472d Statement of grounds for decision or order sustaining demurrer. Whenever a demurrer in any action or proceeding is sustained, the court shall include in its decision or order a statement of the specific ground or grounds upon which the decision is based . . ." (Emphasis added.)

It is unclear what alterations would have sufficed as judges who sustained demurrers with leave to amend addressed different grounds each time or such vague grounds as to be impossible to address as follows:

"The first amended complaint fails to state facts sufficient to state a cause of action and is also ambiguous and uncertain" Judge Herlihy (App. 941),"

"causes of action must be separately stated" Appendix (App. 1013), Judge Peter G. Stone.

"on the basis of uncertainty and failure to state a cause of action . . . and "Defendant's demurrer is overruled on all other grounds raised in Defendant's moving papers." Judge Levinger, Appendix 7 (App. 1792:5-7).

"All other grounds" in Defendant's moving papers which were overruled by Judge Levinger are the same grounds used by the next Judge, Judge Stone, to base dismissal of the complaint. The only specific ground stated--causes of action must be separately stated--was corrected in the next amendment.

c. Judge Stone's orders are inconsistent with each other.

None of the grounds in the final order signed by Judge Stone were mentioned by Judge Stone in his ruling eight months

earlier sustaining Defendant's demurrer with leave to amend, though the whole substance was before him both times.

d. Among judges, orders are inconsistent. A question of judge shopping and fair process is raised. Judge Stone's final order was based on grounds specifically rejected by Judge Levinger four months earlier.

In response to Defendant's Fourth Demurrer to the Third Amended Complaint, Judge Levinger made specific findings as follows, Appendix 7 (App. 1791:5-7, 1756-1758):

Judge Levinger found the issue of standard of care to be irrelevant as "The defendant did not treat the Petitioner or perform any procedure on her." (App. 1757:26-27)

Judge Levinger rejected defendant's notion of sham pleading, ruling that "The fact that the Petitioner has alleged other defendant's have caused her certain damages is not inconsistent with the possibility that the defendant caused Petitioner to suffer damages, and the Petitioner is entitled to plead alternative theories." (App. 1757:13-18)

Judge Levinger rejected Gould's assertions that he was exempt from liability for reporting a suicide threat as "The allegations here are the defendant's statement were made in bad faith, i.e., they were malicious, false and intentional." (App. 1757:3-6) *Schwartz v. Thiele* (1966) 242 *Cal.App.2d* 799, *Fish v. Regents of UC* (1966) 246 *Cal.App.2d* 327

Judge Levinger rejected Gould's asserted privilege She determined that Welf. & Inst. Code & 5278 does not apply because "The Petitioner was not taken into custody nor the privilege does not bar the defamation claim . . ."

Judge Levinger considered herself bound by Judge Leslie Nichols' ruling on punitive damages though she was reluctant about it (App. 1757:21-24). Oddly Judge Stone did not seem in the least bound by Judge Levinger's rulings and findings.

Judge Levinger sustained the fourth demurrer "with leave to amend on the basis of " "Failure to State a Cause of Action" and "The Complaint is Uncertain." The order indicates that the reason for denying summary judgment was that plaintiff failed to establish "in particular, the amount of damages." (Calif. CCP § 425.10) (App. 1792:18-20) Appendix pp. 23-37

Petitioner's Fourth Amended Complaint provided detailed calculation of actual losses in response to Judge Levinger's determination and order.

Judge Stone's final order sustained Defendant's demurrer without leave to amend (App. 2014-2015). The specific grounds for Demurrer earlier rejected by Judge Levinger were now used as the grounds for dismissal (App. 1755-1758 and 1792) together with the ground of uncertainty and failure to state a cause of action because of the specific grounds (the grounds formerly rejected by Judge Levinger). Thus the two Superior Court judges rulings are diametrically opposed on substance.

2. Defendant's Summary Judgment Motion was denied.

In response to notice of Defendant's motion for summary judgment, Petitioner made her own summary judgment motion (App. 1210-1362).

To support his motion, Defendant submitted his personal declaration (App. 1198), and that of neurologist, Bruce T. Adornato, who claimed Gould had met a "standard of care." (App. 1179) Adornato's statement was based solely on his review of the Complaint, Gould's papers and his Deposition. Adornato has neither seen Petitioner, nor as Gould himself, has Adornato examined any of Petitioner's records and thus his Declaration is inadmissible on its face as uninformed. It is further inadmissible because he addresses only the issue of standard of care where no care was given. All Gould acts complained of took place after Petitioner had left his office rejecting his "care."

Judge Levinger found the issue of standard of care to be irrelevant as "The defendant did not treat the Petitioner or perform any procedure on her," (App. 1757:25-27, Transcr. 2:25-27) and "Defendant's standard of care argument does not defeat the alleged intentional torts, such as the defamation and invasion of privacy claims." (App. 1758:2-7)

Judge Levinger overruled Gould's assertion of privilege (App. 1758:5-7 and 1757:1-12)

Defendant's Summary Judgment motion was denied and not appealed. (App. 1757:25-28) All Gould's theories and

excuses were rejected by Judge Levinger leaving him with no defense to the Amended Complaint. On that basis alone Petitioner should have been awarded summary judgment. Code of Civ. Proc. § 437c: "(a) Any party may move for summary judgment in any action or proceeding if it is contended that . . . there is no defense to the action or proceeding." Code of Civil Procedure § 437c requires "summary judgment be granted if all the papers submitted show that there is no triable issue of material fact and that the moving party is entitled to a judgment as a matter of law" In each particular and denying Defendant summary judgment Judge Levinger effectively ruled that Gould had presented no defense to the facts or legal framework of the complaint.

3. a. Petitioner's summary judgment motion was fully supported.

Witness declarations, official findings, records, and a knowledgeable and an expert witness declaration (App. 1243 through 1362) were properly submitted by Petitioner proving each fact essential to each cause of action including his libel, declarations showing Gould's slander, violation of privacy, negligent interference with employment, intentional infliction of emotional distress, intentional interference with prospective civil action, and personal injury from negligence. (Separate Statement of Material Facts in Support of Petitioner's Summary Judgment Motion, App. 1237–1242; Vol. VII., supporting documents. (App. 1243-1362))

b. Petitioner's summary judgment motion was denied because numerical damages were not shown. Appendix 7, p. 33.

Petitioner's motion was denied on the single following ground: "The plaintiff fails to offer a numerical amount of damages. She must establish each and every element of her claim, and the showing as to damages is insufficient." Appendix 7 (App. 1758:10-12, 1792:19-21) But damages for defamation, violation of privacy, material interference with another court action, and personal injury are what the jury determines, not material facts to be pled. They flow from and after determinations of facts. Petitioner submitted proof for all her material facts. "The motion shall be granted if all the papers submitted show that there is no triable issue of material fact and the moving party is entitled to a judgment as a matter

of law." (Emphasis added.) CCP § 437c(c) A trial to determine damages can be held after summary judgment.

c. The complaint was amended to address Judge Levinger's ruling. Then Gould demurred again on the same grounds. Before a different judge the demurrer was sustained on the very grounds Judge Levinger had just rejected. Dismissal was upheld in the Sixth District Appellate Court.

The Fourth Amended Complaint included details of numerical amount of damages (App. 1977-1978 and throughout the complaint 1933-1978) in response to Judge Levinger's determination that the showing as to damages was insufficient, at the same time recognizing the specific restrictions of CCP § 425.10 (b) (Appendix p. 60) on stating the personal injury elements of damages.[2]

It was surprising to be again confronted with a demurrer and particularly a demurrer asserting rejected assumptions that Gould has some role with respect to Petitioner and reasserting the same rejected ideas as if Judge Levinger had never determined anything.

The demurrer was sustained by Judge Peter G. Stone without leave to amend. Appendix 6, p. 31 (App. 2006) Defendant wrote his own order which repeated all his rejected assertions. In spite of Petitioner's letter pointing this out. Appendix 5, p. 27 (App. 1998) Judge Stone signed Defendant's order. Appendix 4, pp 25-26 (App. 2014)

4. Issues/Orders Appealed from the Superior Court

This Appeal raises issues pertinent to the following orders and judgments from the state courts in addition to the federal issues and issues from the State Court of Appeals:

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[2] Damages requested include damages for disability, personal injury, damaged relationships, damaged reputation, damages for loss of income, job and profession, past and future medical care, general damages for irreversible loss of privacy, general damages for irreversible defamation, and loss of benefits. Petitioner also requested an apology. Petitioner also requested destruction of false papers. (Some of the damages are shared responsibility with other defendant's in Petitioner's Worker's Compensation Action and federal action--others who directly caused Petitioner's repeated and chronic toxic exposure.) Petitioner made a motion to be allowed to request punitive damages based on the malice and fraud of Gould's acts.

a. Order sustaining Defendant's Demurrer without leave without findings (PGS) (Appendix 4) (App. 2006), dated August 2, 1995, and from the order filed August 21, 1995 (App. 2014-2016), sustaining Defendant's demurrer without leave fashioned by Defendant, in fundamental conflict with earlier findings by Judge Levinger (MJL) (App. 2001-2004 and 1790-1792), and order sustaining Demurrer by Judge Levinger, May 9, 1995 as it required showing of amount of damages. Appendix 7.

b. Final judgment and dismissal, filed August 21, 1995 including costs of suit to Defendant (Appendix 4) (App. 2017) (PGS),

c. Order denying Summary Judgment to Petitioner, filed May 9, 1995 (Appendix 7) (MJL) (App. 1792),

d. Order denying Petitioner's request for punitive damages, filed October 13, 1994 (Appendix 9) (LCN) (App. 944),

e. Protective order which is inadequate, filed 3/18/94 (Appendix 10) (App. 387) (JAF).

G. ACTION IN THE STATE COURT OF APPEALS

Sixth District Court of Appeals held that Gould had absolute privilege, even for malicious to communication to police and was immune from liability.

The Sixth District Court of Appeals upheld Judge Stone's order in the Superior Court, Gould's demurrer, based on their new principle in this case–that communication of a suicide threat to police is absolutely privileged Appendix 2, pp. 10-15. (Though petitioner made no suicide threat, and the only thing before the court in a demurrer, the complaint, does not say she did. App. 1933-1978) The Sixth District Court of Appeal had repeated the lie Gould published and broadcast–part of his libel and slander, in spite of the complaint, the police findings, and the findings of the original judge, Judge Levinger who ruled: "The allegations here are the defendant's statements were made in bad faith, i.e., they were false, malicious, and intentional." (Appendix 8 p. 36) (Transcripts 2:4-6, also at App. 1757) Gould's lies, including his false allegation of a suicide threat were found to be "unfounded" by the San Jose police (Appendix 15, p. 55), App. 1729).

VI. SUMMARY OF ARGUMENT

A. ISSUES THAT WERE RAISED ON APPEALS AND RAISED HERE

Petitioner asks the court to find that her First Amended Federal Complaint stated a federal cause of action because:

1. Defendant was a state actor. He acted with the special, extra-constitutional power conferred by state statute. In addition he enlisted and acted in concert with the police until they found he had lied to them. Primary damage in this case was accomplished before the police disengaged.

2. Defendant acted under the color of state law–California Welfare & Inst. Code § 5150 or §§ 5201-5202. Without the cover of these statutes, and the assistance of the police he required, his acts would be attempted kidnapping with injury.

3. Gould's acts took Petitioner's state and federal constitutional rights including privacy, first amendment freedom, freedom from false arrest and interrogation, and procedural and substantive due process.

Petitioner asks the court to find California Welfare & Inst. Code §§ 5150, 5201-5202 unconstitutional on their face. They invite violation of procedural and substantive due process, liberty and privacy by their use alone. Petitioner asks the court to reject "emergency" excuses for retaining these statutes. Attempts at fixing them have failed. Petitioner realizes that if someone she had immediately rejected as a doctor could cause complete havok in her life by unwarranted use of these statutes, that no one is safe from unconstitutional taking of their freedom and privacy.

Petitioner asks the court to find that Defendant is not privileged to make an unfounded communication to police under Civil Code 47 (b), and his use of Calif. Welf. & Inst. Code §§ 5150, 5201-5202, as the Sixth Appellate District has determined. If he is held to be privileged for unfounded communication to police, Defendant must not also be immunized for his violation of Petitioner's privacy, libel and slander, negligence causing personal injury and property damage, intentional infliction of emotional distress, negligent interference with Petitioner's employment, or intentional interference with Plaintiff's civil action by spoliating evidence.

Petitioner asks the court to find her Third and/or Fourth Amended state complaints state causes of action. Petitioner asks the court to affirm the substance of Judge Levinger's rulings on the individual assertions of Defendant's fourth Demurrer (pp. 16-17), and find it improper for another Judge in the same superior court to overrule her orders and findings.

The court is asked to find Petitioner met her burden of proof for summary judgment, and is entitled to summary judgment. The court is asked to find that punitive damages are appropriate in this case, and CCP § 425.10 does not apply because, as Judge Levinger determined, Gould was not Petitioner's care provider. The court is asked to order that either the Third Amended or Fourth Amended complaint be set for trial on the issue of damages, and if a jury awards damages, that punitive damages can be sought as well.

VII. ARGUMENT

1. California Welf. & Inst. Code §§ 5150, 5201-5202 are unconstitutional of their face.

These sections improperly delegate extraordinary extra-constitutional power to private individuals.

a. Is a doctor a state actor?

A doctor becomes a state actor by taking the special authority conferred by state law (Welf. & Inst. Code § 5150) that gives him official power. to label a person mentally disordered and dangerous, and order that person arrested.

A doctor becomes joined to a state actor when he enlists the police to accomplish arrest, detention, and/or transportation under authority of a state statutory scheme. (Welf. & Inst. Code §§ 5150, 5201-5202)

The very state-conferred privilege the state appellate court says Defendant has under Civ. Code § 47 (b) to make a false report of a suicide threat to police turns him into a state actor when he does so.

b. Acts taken under special authority conferred by a state statute are acts under color of state law when they violate the principles for which the law was adopted. When constitutional rights are taken as a result, the law, the actor and the act must be accountable and scrutinized, not simple given

the unbridled right to do it again as the state courts have done in this case with Defendant.

Where a statute confers extra-constitutional authority for specific purposes, and when that authority carries with it with an aura of trust, but the person with this special authority instead uses the special power for nefarious purpose, such acts are under color of state law, rather than in accord with state law. *Hafer v. Melo*, 502 U.S. 21 (1991). Here defendant is a private party making private use of specially conferred power that requires a heightened level of trust. He should not have even qualified immunity. *Wyatt v. Cole*, 504 U.S. 158 (1992)

When the state courts allow Defendant unchecked use of power under a statute (Calif. Welf. & Inst. Code § 5150) for nefarious purpose, by also immunizing him as privileged to misuse his authority under the statute (by Calif. Civ. Code § 47 (b)), his acts are taken under color of state law.

c. Calif. Welf. & Inst. Code § 5150, & 5201-5202 are too vague and overbroad to meet a constitutional liberty test. An accuser can cause confinement of another simply by asserting the terms "mentally disordered and dangerous to self," where the term "mentally disordered" is not defined and could mean any apparent state of mind personally disagreeable to the accuser and degree of "danger to self" could mean a broad range of thoughts or activities from smoking cigarettes, or declination to willingly enter a psychiatric facility, to suicide in progress. Calif. Welf. & Inst. Code § 5150, & 5201-5202 activated by these definitions, with no built-in guidelines, are thus too vague to protect constitutional liberty.

d. These sections do not contain a requirement for knowledgeable medical expertise to rule out physical causes, knowledge of the person or case, nor do they ensure no conflict of interest, all of which should be fundamental when liberty is at stake. None of the following are required of an accuser to activate the statutes: good character, medical expertise, psychiatric credentials, knowledge of the patients medical history, knowledge of the person's life circumstances, knowledge of a person's care givers, a showing that physical causes have been ruled out, engagement as a caregiver, proof of lack of financial interest.

e. These sections do not contain or require objectives or accountability which should be mandatory when liberty is at stake. There are no requirements to seek second or third opinion. Person's taking charge do not have to agree about the condition or lack of condition. There are no objective measures or requirements to evaluate the severity of a condition, the effectiveness of a particular treatment, or to determine when the alleged emergency is over. Many psychiatrists do not use involuntary commitment as they find it counterproductive.

This court held it an unconstitutional to confine a person who was not harmful to himself or others (*O'Connor v. Donaldson*, 422 U.S. 563 (1975)), affirmed that patients who refuse to be treated cannot be continually held as the purpose of commitment is treatment not incarceration (*O'Connor v. Donaldson*), that civil commitment of mentally ill persons required not only notice and hearing, but also that the conditions justifying commitment be proved by clear and convincing evidence. (*Addington v. Texas*, 441 U.S. 418 (1979).) It also held that the state cannot entirely immunize doctors. (*O'Connor v. Donaldson, Op cite*)

National Medical Enterprises, Inc. (NME) nationwide fraud came to its apex in late 1991, sixteen years after this court decided *O'Connor* and twelve years after *Addington*. *O'Connor* and *Addington* did not prevent NME from growing to a four billion dollar corporation on the backs of hundreds of thousands of individuals who had their freedom stolen, who had their reputations stolen, who were drugged with mind altering drugs, who may have endured electric shock, who may have lost a measure of their health and brain power from drugging, shock. These person's may have lost access to medically needed hormones or insulin and/or loss of medical treatment, who had their lifetime medical insurance benefits stolen. They lost jobs when they could not attend work, or from the defamatory effects. They may have had family associations forever altered, or lost custody of their children. They may have lost critical childhood development periods and days, weeks, months, or years of their education, friends and social standing from the defamation, and may have lost property, credit and personal effects as they were swept up and committed for days, weeks, months and years. *O'Connor* and *Addington* did not prevent the death of five elderly people

who were medical patients with severe medical conditions who were involuntarily transferred to the Oak Creek lock up facility for insurance theft purposes and died there. (App. 1872. Also see 1862 through 1907 for documents detailing the National Medical Enterprises, Inc. mental commitment fraud.)

This court's reaffirmations of constitutional rights in *O'Connor* and *Addington* were courageous, landmark decisions. But they were not enough to ensure the constitutional rights of the people who were used and damaged, and even killed by National Medical Enterprises, Inc. fraud. Some reasons for this may be that the offending enabling statutes remained on the books, and that once labeled with mental illness, the person so labeled looses their credibility even where it can be shown by official police findings that the person doing the labeling is the one without credibility.

2. Acts of constitutional deprivation that rise to takings:

a. Constitutional liberty is broader than freedom from unwarranted confinement. It is freedom from unfounded arrest and interrogation for the purpose of unfounded confinement. It is freedom from the threat of unwarranted confinement. It is freedom to speak or remain silent without fear of being confined. It is freedom to define one's own thoughts, associate with family and friends, conduct one's business, protect ones good name, and maintain a zone of personal and family privacy without government-empowered interference. It is freedom to choose one's care providers and to seek and obtain medical care without government-empowered interference. In each of these areas, Petitioner was deprived of constitutional liberty by Defendant's defamation to the extent that her health and the integrity of her marriage and family relationships were crushed. Petitioner believes that Defendant's uninvited, government-empowered interference in her life, work, and health rise to constitutional takings.

Deprivation of Constitutional liberty to seek medical care rises to a taking when a medical patient is caused to be detained without probable cause, kept from attending critical portions of prescribed, scheduled, and clearly needed medical treatment, resulting in material loses of medical treatment and eventually

all medical care. Constitutional liberty is taken when Defendant's state-privileged acts resulted in intense pain, and emotional distress as shown by ensuing loss of 12% of Petitioner's body weight in the following 15 days so traumatic were Gould's acts.

The ninth circuit acknowledged a liberty interest citing *Doe v. Gallinot*, 657 F.2d 1017, 1021 (9th Cir. 1981), "Involuntary commitment to a mental treatment facility implicates an important, constitutionally protected liberty interest of the person committed," but they justified California's 3-5 day commitment scheme, (Appendix 13, p. 52) "We have previously upheld the district court's finding that a 72-hour detention based on Cal. Welfare & Inst. Code § 5000, et seq., is justified as an emergency measure, provided that a probable cause hearing is held shortly thereafter. See id at 1022."

If a probable cause hearing is held "shortly thereafter," this means that people can be arrested without probable cause, as happened to Petitioner here, and as here, threatened with, or locked up without probable cause. Welfare & Inst. Code § 5150 does not provide for any such "after" hearing requirement. It is not clear how this statute meets even a minimal liberty interest

b. Deprivation of constitutional privacy rises to a taking in this case. This court said "It is a promise of the Constitution that there is a realm of personal privacy which the government may not enter. *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U. S. 833, 112 S.Ct. 2791. Where is that realm? Does such a realm exist for those who have been labeled? Gould can get on with his insurance fraud. He can target whom he chooses as long as he labels them first. He has been immunized from ANY liability. He can go on with his intrusion and destruction. The California courts have awarded him privilege and handed him carte blanche.

He can intrude upon and destroy by defamation marriage, family, profession, health care relationships, and health. One uninformed, maliciously motivated person can assert authority for interpreting another person's private feelings, thoughts, and broadcast these assertions as long as he calls the police with an invented story.

c. California Welf. & Inst. Code §§ 5150, 5201-5202 schemes for initiation of three-five day commitment do not meet a Fourteenth Amendment procedural due process test. Under the statutes, probable cause can come from interrogation with no advice that an attorney can be present on questioning, or advice that a person's words may be used against him. A person's words uttered with the expectation of privacy in a private medical consultation can be misrepresented, broadcast, and used to attempt to commit him by a person with a financial interest in his commitment, as here. Under § 5150 no warrant, petition or application is required to arrest, interrogate, or threaten to transport a person for commitment? Probable cause is not required before arrest, transport and lock down.

d. California Welf. & Inst. Code §§ 5150 & 5201-5202 fail a substantive Fourteenth Amendment due process test as they deny equal protection to those labeled mentally disordered and dangerous-to-self.

e. California Welf. & Inst. Code § 5150 & 5201-5202 schemes for three-five day commitment fail a First Amendment test. When the government empowers an entity to cause someone arrest, detention for compelled police or court questioning, or threatened commitment because of a person's speech alone, or as here, because of misrepresentation of a persons speech or thoughts, first amendment freedom is violated on its face.

f. There is no exception in the Constitution. There is no justification for an emergency exception for a commitment scheme which violates the most fundamental constitutional rights on the premise of saving one from one's self. Most mental symptoms are now known to arise from physical causes or external circumstances, neither of which circumstances commitment can improve. It is under this emergency exception that persons begin the downward spiral into dependency by failure to identify physical causes. Involuntary "emergency" commitment cannot be justified as it precludes medical care. (App. 1730-1741)

If a psychiatric jailer does not have to motivate his subjects to retain them as patients, he does not have to keep up with the latest research, improve his skill, show any progress, or even behave civilly to those locked up. If an individual is locked

away, the willingness he may have had is turned to rote submission, loss of autonomy and therefore loss of responsibility for himself, the very opposite from a therapeutic approach. Both psychiatrist and patient lose with psychiatric commitment. Many skilled skillful psychiatrists never use these commitment processes.

In the era when this court's *O'Connor* and *Addington* were decided, doctors had practically unchallenged power to keep medical patients in general hospitals subject to the doctor's directions until they were officially "released." Only in very recent years have medical patients been aware that they could assert their right to leave or change hospitals, reject unwanted treatment, dismiss doctors on their own initiative, and appoint someone of their choice to act as their medical advocate.

It is under "emergency" exceptions that persons were drawn into the National Medical Enterprise, Inc. four billion dollar involuntary commitment insurance fraud. Playing his part in it, Gould tried to commit Petitioner. No one has contacted Petitioner in an effort to prosecute Gould. The police officer could have arrested Gould but he did not. Many of those whose who operated the mental facility are still there and still know how to maintain their "census." National Medical Enterprises, Inc. fraud shows that the involuntary commitment processes have nothing in place to monitor, recognize or scrutinze what they do, not at some low level, not at a heightened level, just no level of scrutiny

3. Inconsistency of liability for misuse of the statutes. Welf. & Inst. Code § 5203 permits an action for damages for anyone making a knowingly false report that may result in commitment, even if the false report is made in a court. The Calif. Appeals Court has ruled the same communication, if made to the police is privileged. This ruling removes all disincentive to misuse these statutes. These differences in liability make very little sense.

4. Judge Shopping. Is it acceptable practice to present the same issues to the same court but a different judge after one judge has already heard them? It is acceptable to present them to a different judge after a judge has ruled against them, in an attempt to get a favorable ruling from a different judge in the Superior Court? Can a Superior Court judge overrule another

Superior Court judge who has already made a determination on particular issues of a case?

5. Summary Judgment. California Code of Civ. Proc. § 425.10 (b) (Appendix 17) prohibits naming specific damages in a complaint of the type here. Only a showing of "in particular the amount of damages" in the Third Amended Complaint remained (Appendix 7:33), the burden of proof otherwise met for Petitioner's Summary Judgment motion. Summary judgment should be granted. Damages and injunctive relief are often tried separately. Is setting forth a complete assessment of damages in a complaint, required for summary judgment when the statute prohibits it?

6. The Protective Order is inadequate. Simply because Gould has a title does not confer upon Gould's defamatory papers status worth preserving. He was never Petitioner's caregiver. Such defamatory papers serve no useful purpose. Defamatory writings by someone not a doctor are not considered indestructible. Regardless of any other determinations, can Gould's papers be reviewed in an objective manner, in light of the damage they have already done to determine if they should be retained in any form? If Gould's papers cannot be destroyed, can the protective order be made proactive considering the disability of Petitioner?

7. Request for punitive damages should be allowed. Calif. Code of Civil Procedure §425.13, requires a prediction of probability of the outcome of a trial before requesting punitive damages of a health care provider. There is a question of process and equal treatment. Plaintiff was restricted by stays on discovery during the period she had to prepare for the motion. Thus the process was inherently unfair as the motion requires a high level of proof. Petitioner's complaint should not be subject to CCP § 425.13 because Gould was rejected outright as Petitioner's health care provider and his actions were taken after his rejection.

VIII. CONCLUSION

Petitioner urges the court to find that persons who are defamed and physically injured in the process of attempted commitment have remedies which include 42 U.S.C. § 1983 actions for violations of fundamental liberty, privacy, First Amendment, and, procedural and substantive Fourteenth Amendment due

process; and other remedies which may include tort actions for negligence causing physical injury, intentional infliction of emotional distress, property loss, and actions for defamation.

Petitioner urges the court to nullify California Welfare & Institution's Code § 5150, & 5201-5202 as unconstitutional.

Petitioner requests the Court overrule the California Sixth District Court of Appeal's ruling that Defendant is privileged to make a fraudulent report to police.

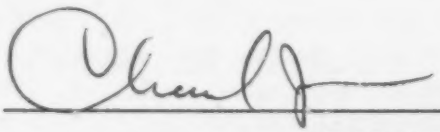
Petitioner urges the Court to find she stated causes of action in both the state and federal courts, and has provided sufficient evidence to receive summary judgment in her favor, with damages and punitive damages remaining for a jury.

Petitioner requests the court to order the destruction of Gould's libelous papers. There is no reason to preserve Gould's libel one day.

The Constitution does not exclude anyone. Our nations founders knew that liberty was so special that people would defend the promise of liberty with their lives.

RESPECTFULLY SUBMITTED:

DATE: February 11, 1997

BY: 

CHERIEL JENSEN
13737 QUITO ROAD
SARATOGA, CALIFORNIA 95070
408 379-0463

VERIFICATION

I, Cheriel J (Cheriel Jensen), am the plaintiff and Petitioner in the above entitled action. I have read the foregoing Petition and know it's contents therefore. The same is true of my own knowledge, except as to those matters which are therein alleged on information and belief, and as to those matters, I believe it to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

February 11, 1997, at SARATOGA, California